



Certiorari Guide for Medical Parole in Massachusetts

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Appendices are not included in the printed guide and are available online at www.plsma.org/mptraining.

Please do not send this guide into DOC facilities.

How to Use This Guide

This document is intended as a step-by-step guide for attorneys representing a client seeking review of the MA Department of Correction's denial of their medical parole petition. You can find a link to these materials (including a case bank and recorded training) here:



www.plsma.org/mptraining

The guide contains four sections:

- Medical Parole in Massachusetts – A Legal Overview
- General Advice for Representing Medical Parole Clients
- Certiorari Actions for Medical Parole
- Logistics for Client Visits, Calls, and Correspondence

If you are undertaking a medical parole cert action for the first time, **we highly recommend that you first review our guide on medical parole petitions for pro bono practitioners.** This guide provides useful background information about the medical parole statute, regulations and policies, as well as advice on how to work with incarcerated clients, especially those who may be elderly, end-of-life, or disabled. You can find that guide at the link above.

You can also request a PDF copy of the medical parole petition or certiorari action guides, including the Appendix, via email from PLS Pro Bono Counsel Sarah Blair at sblair@plsma.org.

This guide was published on October 30, 2024. While PLS strives to keep our materials up to date, the laws and regulations around medical parole are subject to change. You are ultimately responsible for keeping abreast of any changes that may occur after the guide is published.

This guide was published by Prisoners' Legal Services on Oct. 30, 2024. Attorneys using this guide are responsible for staying current on the laws, regulations, policies, and procedures affecting representation.

A Note on Language:

PLS strives to use people-first language to refer to our clients and other incarcerated people. Through surveys and conversations with our clients, we have learned that many prisoners find certain commonly used terms, such as “offender,” “felon,” “convict,” and “inmate” to be offensive. The Marshall Project, a leading media outlet covering mass incarceration issues, published a thoughtful piece that includes additional context about the terminology around incarceration: www.themarshallproject.org/2021/04/12/what-words-we-use-and-avoid-when-covering-people-and-incarceration.

We recommend using terms like “client,” “incarcerated person,” and “prisoner” to refer to your client and other people in prison. With that said, incarcerated people are of course free to refer to themselves with whatever language they prefer, and it can be helpful to ask your client if they have preferred terminology or to mirror the language they use where appropriate. Additionally, keep in mind that there are various policies and groups with words like “Inmate” in their title or language (for example the Norfolk Inmate Council), so you may need to use otherwise disfavored language in the context of specifically citing to these documents or groups.

A.

Medical Parole in Massachusetts – Legal Overview

The medical parole statute was enacted by the Massachusetts legislature in April 2018 as part of the Criminal Justice Reform Act. The statute states that a prisoner in the DOC or a county jail “may be eligible for medical parole due to a terminal illness or permanent incapacitation.” The statute was enacted to facilitate the release of dying or permanently disabled individuals in recognition of the rising costs of incarcerating aging prisoners and their need for humane, community-based end of life care. A petition seeking medical parole is filed initially with the DOC, but the DOC’s decision can be appealed in state court through an action in the nature of certiorari (“cert” or “cert action” for short), which is the subject of this guide.

Documents to Reference:

[Massachusetts General Laws chapter 127, section 119A](#) - MA medical parole statute (see **Appendix A, Doc. 1**)

[501 CMR 17.00](#) - Regulations promulgated by Executive Office of Public Safety and Security (see **Appendix A, Doc. 2**)

[103 DOC 603](#) - DOC medical parole policy (see **Appendix A, Doc. 3**)

The medical parole petition is first submitted to the superintendent of the prison where the prisoner is held, typically by either the prisoner or their family member or legal advocate (note that non-attorneys like paralegals are allowed to file petitions). Within 21 days, the superintendent must submit a recommendation to the commissioner of the DOC, along with a medical parole plan, a written diagnosis by a physician, and an assessment of risk for violence that the prisoner poses to society. The commissioner then has 45 days to issue a written decision. Therefore, the maximum time from filing to decision is 66 days.

The Commissioner must utilize a three-part standard to determine eligibility for medical parole:

- (1) whether the prisoner is terminally ill and/or permanently incapacitated;
- (2) whether the prisoner is sufficiently debilitated such that they will not be a risk to public safety; and
- (3) whether the prisoner will live and remain at liberty without violating the law and that the release will not be incompatible with the welfare of society.

B.

General Advice for Representing Medical Parole Clients

Your medical parole client may be very different from the clients you are used to representing, and they are living through unique and challenging conditions. There are a few guiding principles to keep in mind when representing or supporting incarcerated people, including those seeking medical parole:

- **Be Both Patient and Proactive:** It is important to be proactive when representing clients in jail or prison because delays are common when dealing with the prison system. It is not unusual to experience long delays in getting medical records, or for communication to take longer because you cannot call your client (and therefore have to rely on mail or a call from them). If you do not hear from a client within 10 days after sending in a piece of mail, please consider scheduling a legal video visit with them if the communication is urgent. Especially where a client is very elderly or has a terminal condition, it is important to act quickly.
- **Be Present:** Many individuals seeking medical parole have been incarcerated for decades and may no longer have family or other loved ones on the outside. You may be the first person on the outside they have talked to in decades and possibly the last person in the community to express care for them before they die. Your legal representation is valuable, but your presence as a person and an advocate may be even more so. It is important to communicate with your client as clearly as possible and to meet with them regularly to keep up to date on their medical situation. **We encourage you to get to know your client and to periodically ask how they are feeling and doing.**
- **Consider Accommodations:** Many people who are eligible for medical parole have serious illnesses or are disabled, and the vast majority are elderly. It will be important to ask your clients whether they would benefit from any accommodations when communicating with you. For example, someone who is hard-of-hearing may benefit from closed captioning on legal video visits (on Zoom) and a higher volume. Someone who has a visual impairment might benefit from a larger font in written communication. Individuals with cognitive illnesses might benefit from Zoom or in-person visits because they may not be able to remember your phone number or make calls.
- **Ask for Help:** The medical parole team at PLS is happy to assist if you have any questions about the medical parole process. Much of the medical parole process involves staying abreast of the client's medical condition and pushing DOC to act expeditiously. Where it is unclear whether and how to ensure that DOC is taking the necessary steps to process the petition or release the client, we can provide advice.

C. Certiorari Actions for Medical Parole

The medical parole statute, G.L. c. 127, § 119A, states that, “a prisoner, sheriff or superintendent aggrieved by a decision denying or granting medical parole ... may petition for relief pursuant to section 4 of chapter 249.” Chapter 249, section 4 governs certiorari actions, which are intended to correct errors committed in the administrative procedure, including a determination by an agency decisionmaker that is arbitrary and capricious or not supported by the record. (**Appendix C, Doc. 1**) Cert actions are filed in Superior Court and the Superior Court decisions can be appealed to the SJC.

Cert actions are important because they help create law interpreting the medical parole statute, which is still relatively new. They also help hold the DOC accountable to the courts for medical parole decisions that have no basis in law or fact. Only a small percentage of medical parole petitions are granted each year, often due to the DOC’s failure to adhere to the statutory requirements in making decisions. Cert actions help ensure that clients who should be out on medical parole do not needlessly die in custody.

We want to note, however, that the SJC recently limited the authority of Superior Court judges to direct a medical parole petitioner’s release if the DOC’s decision was indeed arbitrary or capricious. Prior to *McCauley v. Superintendent, Massachusetts Corr. Inst., Norfolk*, Superior Court judges who found for the plaintiff in medical parole certiorari actions would sometimes directly order the Commissioner to grant medical parole. 491 Mass. 571 (2023) However, in *McCauley*, the SJC held that Superior Court judges do not have the power to substitute their judgment and grant or deny medical parole, but instead are limited to remanding the medical parole decision to the Commissioner for reconsideration of the decision. *Id.* at 603. Therefore, the best-case scenario in a certiorari action is a remand to the Commissioner with a mandate to reconsider one or more issues addressed by the Superior Court.

Step 1 – Establish Client Relationship

Visiting the Client and Setting up a Communications Plan

Upon accepting the case, we recommend that you visit the client in person in their DOC facility or schedule a Zoom legal visit to 1) introduce yourself and 2) explain that you will be preparing a medical parole cert action on their behalf. You should also find out from the client if any circumstances have changed such that there is no longer a strong basis for a cert (for example, their medical condition has improved).

You should formalize your legal relationship with the client through a representation agreement. We have included a sample representation agreement with this guide. (**Appendix C, Doc. 2**).

We also encourage you to set up a communication plan with your client to ensure that you are checking in regularly by phone or Zoom. We recommend touching base with the client at least every 3-4 weeks, unless the progression of their medical condition requires more frequent communication. Unfortunately, the DOC does not allow phone calls from individuals outside the facility, so only your client can call you. We find that the elders we typically work with on medical parole do not call very often because they might have difficulty hearing via the phone, remembering how to make calls, or may be too weak to leave their beds to get to a phone. Section D of this guide and its appendices lay out our recommendations on best practices for staying in touch with clients and how to arrange video and in-person visits.

Finally, you should determine whether your client may be eligible for a waiver of court costs and fees due to indigency. You can check to see if they qualify based on indigency using this tool from the Mass courts website. If your client qualifies, you should work with them to complete and sign Inmate's Affidavit of Indigency form (Appendix C, Doc. 3) as soon as possible. You will also need to prepare a short Motion to Waive Fees and Costs Due to Indigency. You can find an example of this in Appendix C, Doc. 4.

Step 2 – Familiarize Yourself with the Law and the Record

Familiarize Yourself with the Medical Parole Statute and Caselaw

As we have noted above, while this guide provides some basic information about the process of litigating cert actions and current caselaw, we highly recommend that you to first get up to speed on the medical parole petition statute and process, which is discussed in detail in our petition guide here, available at www.plsma.org/mptraining.

The MA Supreme Judicial Court (SJC) has issued numerous decisions interpreting M.G.L. c. 127, s 119A. These are some of the most important cases:

- *Buckman v. Comm'r of Correction*, 484 Mass. 14 (2020) (burden of creating medical parole plan is on DOC)
- *Harmon v. Comm'r of Correction*, 487 Mass. 470 (2021) (medical parole is not available to pretrial detainees; prisoners can file multiple petitions following a denial)
- *Emma v. Massachusetts Parole Board*, 488 Mass. 449 (2021) (the Parole Board does not have the authority to re-parole a medical parolee once it has determined there has been a violation of a condition of parole)
- *Malloy v. Department of Correction*, 487 Mass. 482 (2021) (reasonable short-term delays in releasing someone granted medical parole are acceptable when they are outside the control of the DOC)

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- *Carver v. Comm'r of Correction*, 491 Mass. 608 (2023) (the superintendent is not required to prepare a detailed medical parole plan where the petition has already presented such a plan)
- *McCauley v. Superintendent, Massachusetts Corr. Inst., Norfolk*, 491 Mass. 571 (2023) (remand of medical parole case is appropriate for failure to perform standardized risk assessment; judges who review Commissioner's medical parole decision cannot independently grant or deny medical parole)

You can find copies of these cases in the Case Law Bank located in Appendix E.

Review the Administrative Record

Next, you should ensure that you have a copy of the administrative record (AR), which should include everything considered by the Commissioner as part of their decision. If you have accepted this matter as a referral from PLS, there is a good chance that we have already requested the AR, and it should be included in the referral packet. The AR should include:

- Written medical parole decision;
- Superintendent's (or sheriff's) recommendation and all documents relied on to make the recommendation;
- Healthcare contractor medical assessment;
- District Attorney's written statement;
- Victim's or family members' written statement(s);
- Hearing transcript;
- Petition and all supporting documents, including any supplementary documents filed while the petition was pending.

Step 3 – Prepare the Certiorari Action

Important Considerations:

- As you begin preparing the cert action, please note that you only have **60 days** from the date of decision to file, **so time is of the essence**.
- Per G.L. c. 249, § 4, cert action can be filed in the SJC or Superior Court. In the past, medical parole certiorari actions filed in the SJC have been transferred to the Superior Court sua sponte. PLS typically files these actions in Suffolk Superior Court because the DOC's Legal Division is located in Suffolk County. Certiorari actions in Superior Court are governed by Standing Order 1-96. (**Appendix C, Doc. 5**)

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Notify the DOC

At this stage, you may want to reach out to the DOC attorney assigned to the medical parole petition (who will likely also be representing the DOC on the cert action) to introduce yourself and explain that you plan to seek cert review of the medical parole decision.

You should also ask the attorney whether the DOC will consent to accepting service electronically.

Practice Tip:

If you are unsure of which DOC attorney is assigned to the case, you can email DOC Paralegal Kara Morello-Quinn at kara.morello-quinn@doc.state.ma.us or call the DOC Legal Division (contact information [here](#)).

Assess the Decision for Errors of Fact or Law

When reviewing a medical parole decision, the SJC has determined that the Superior Court may only consider whether the Commissioner's medical parole decision was arbitrary and capricious. The arbitrary and capricious standard is deferential to the agency and requires only that there be a rational basis for the decision. Some of the most common issues that arise out of medical parole denials are as follows:

- The Commissioner's decision that the petitioner is not *so debilitated such that they do not pose a public safety risk* is arbitrary and capricious or not supported by the record;
 - This type of decision can include ones where:
 - Commissioner relies inappropriately on the details of the underlying conviction or the victim's opposition;
 - Commissioner determines that the petitioner is not sufficiently debilitated because they are able to perform some activities of daily living;
- The Commissioner's decision that the petitioner *is not permanently incapacitated*, or their illness *is not terminal* is arbitrary and capricious or not supported by the record;
 - This type of decision can include ones where:
 - Commissioner requires the petitioner to show that they are *totally* incapacitated (often meaning that they are bedbound, reliant upon devices like supplemental oxygen, and unable to feed themselves or toilet on their own), instead of just permanently incapacitated and unable to engage in some activities of daily living (for example, unable to ambulate on their own).
 - The medical assessment relied on by the Commissioner does not use the exact language of the statute and therefore the Commissioner determines that the petitioner does not meet the statutory criteria.

- The Superintendent failed to provide the Commissioner with an assessment of the petitioner's risk for violence based on a standardized risk assessment tool;
 - *See McCauley v. Superintendent, Mass. Correctional Inst., Norfolk*, 491 Mass. 571, 597-98 (2023)

Prepare the Complaint

Prepare the complaint based on your assessment above. Keep in mind that the evidence you rely on in a cert action is confined to the administrative record; all your factual citations should be to the AR. You can find sample complaints in our Sample Pleadings Bank at Appendix F.

Practice Tip:

Because the certiorari process can be slow, if at any point during the process your client's physical or cognitive condition deteriorates, we strongly recommend filing a request for reconsideration of the medical parole decision (501 CMR 17.13(3)) concurrently with the certiorari action. We have had many requests for reconsideration granted while certiorari actions were pending. Please see the medical parole petition guide at www.plsma.org/mptraining for more information about requests for reconsideration.

File the Complaint

You will need to file the following documents by mail or at the civil clerk's office at the Superior Court:

- Civil Action Cover Sheet
- Complaint
- Motion to Waive Fees and Costs Due to Indigency, if applicable
- Affidavit of Indigency, if applicable
- Cover letter listing out the aforementioned documents (optional).

[Rule 4\(d\)\(3\)](#) of the Massachusetts Rules of Civil Procedure outlines the requirements for service of the complaint on a state agency.

You may also be able to electronically file pleadings, but please note that in some cases, matters involving prisoners may be impounded, which may preclude e-filing. You can learn more about the e-filing process, including how to register [here](#). Please also note that, unlike PACER, the Massachusetts e-filing system may not be able to send a copy of the pleading to all counsel on the case, so you may still need to serve the complaint on DOC as is required by Rule 4.

In cases where there is a particular need for expediency, you can file a motion seeking to shorten the time periods in Superior Court Standing Order 1-96 (see below). There is language in multiple SJC decisions about the time-sensitive nature of medical parole, in addition to G.L. c. 231, § 59F, which allows for a motion for a speedy trial for a party who is 65 years or older. Even where such a motion is not allowed, it may prompt the court to set a scheduling conference or address deadlines explicitly with the parties, which can be helpful.

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Step 4 – After Filing

Superior Court Standing Order 1-96 governs the procedure for certiorari actions. Per the standing order, after DOC has been served with the complaint, DOC must file a copy of the AR within 90 days of service.

Practice Tip:

In almost all cases, the DOC has already assembled the AR prior to service of the Complaint, *and* you already have a copy. It can be worth pushing the DOC attorney on the case to not wait the full 90 days by reminding them that the AR is already assembled.

If there was a hearing prior to the medical parole decision and the transcript is not in the copy of the AR you already have, see Standing Order 1-96(2) for the process for ensuring the transcript is made a part of the AR.

Additional Motions

Within 20 days of service of the AR, parties can serve the following motions, subject to Superior Court Rule 9A:

- Motions under R 12(b) or 12(e);
- Motions for leave to present testimony of alleged irregularities in procedure before the agency, not shown in the record;
- Motions for leave to present additional evidence
 - This is especially relevant where a request for reconsideration has been filed in the case since the decision was issued.

Motion for Judgment on the Pleadings

Within 30 days of the filing of the AR or resolution of the preliminary motions, you must serve DOC with a Motion for Judgment on the Pleadings and supporting memorandum under the [Rule 9A](#) civil motion procedure. The Motion for Judgment on the Pleadings is the dispositive motion in this action. The memorandum should include citations to the AR filed by the DOC.

The memorandum in support of the Motion for Judgment on the Pleadings, and the subsequent hearing, are the bulk of the substantive work in these cert actions. One thing to focus on in crafting your argument is the way that the court's order will impact the reconsidered decision. Because the Superior Court judge cannot summarily grant medical parole but must instead remand the petition to the Commissioner to reconsider the decision, you should aim for the court to identify particular errors that cannot be cured except by granting medical parole.

DOC has 30 days to serve their opposition or cross-motion on you. You (as the moving party) must file the Rule 9A package with the court within 10 days of receipt of the opposition, pursuant to [Superior Court Rule 9A](#).

Hearing

Following filing of the Motion for Judgment on the Pleadings 9A package, the court will schedule a hearing. The hearing typically takes place several months after the motions are filed. The parties cannot present any testimony or evidence at this hearing and are limited to making arguments on the motions.

After discussing with your client, consider whether to request that your client be allowed to attend the hearing. This gives the judge an opportunity to meet and observe the client's debilitation in real time, even if briefly. You can put this request in your Motion for Judgment on the Pleadings or file a separate motion. However, be aware that you may have to stay on top of this and confirm with the clerk and DOC that your client is actually going to be allowed access as ordered by the court. Clients are typically only allowed to attend via videoconference and may not be allowed to speak during the hearing. If your client has an opportunity to attend, please ensure that they are aware that they may not be allowed to speak and will likely not be asked any questions.

Practice Tip:

PLS has had some cases in which the judge requested updated information about the client's status at the hearing, and other cases in which the judge confined their inquiry to the record (that is often many months out of date by the time of the hearing).

Post-Hearing/Post-Decision

We recommend that you stay in regular contact with your client while the decision is pending (ideally scheduling calls, video visits, or in person visits for every 3-4 weeks. In case of major changes in health and/or prognosis, consider filing a status report with the court. Also consider whether those changes warrant filing a request for reconsideration with the DOC Commissioner. As we have mentioned above, a request for reconsideration is very similar to a petition and asks the Commissioner to reconsider the decision in light of updated medical information or errors in their decision-making. Please see the medical parole petition guide for more details.

The decision on the Cross-Motions for Judgment on the Pleadings are dispositive and will end the case. If the judge decides to remand the petition to the DOC Commissioner to reconsider the issue in light of errors it has identified, the order may or may not include a timeframe for the new decision to be issued. If there is not, you may want to consider requesting one from the judge to ensure that things move forward efficiently. Even if you achieve a remand, you must carefully monitor the new petition process and actively send updated medical or public safety risk information for the Commissioner to consider. If the client is granted release, you will need to communicate with the DOC Reentry Office and Parole Board to ensure that the client is released in a timely manner. In many cases, clients have died in custody despite having been granted medical parole due to long delays in the release process. Please see the medical parole petition guide for more details.

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If your motion is denied, the decision can be appealed. Please ensure that you inform PLS if you get denied and do not plan to appeal so that we can determine whether we should find counsel for the client or appeal ourselves. You have 60 days to file a Notice of Appeal.

D.

Logistics for Client Visits, Calls, and Correspondence

Documents to Reference:

Phone Calls and Video Visits:

Telephone Access and Use - [103 CMR 482](#) (Appendix D, Doc. 1)

Attorney Video Visit Standard Operating Procedures (Appendix D, Doc. 2)

Points of Contact for Attorney Video Visits (Appendix D, Doc. 3)

In Person Visits:

Attorney Access Regulations - [103 CMR 486](#) (Appendix D, Doc. 4)

Attorney Dress Code (Appendix D, Doc. 5)

Mail:

Inmate Mail - [103 CMR 481](#) (Appendix D, Doc. 6)

AVS Implementation Memo (Appendix D, Doc. 7)

AVS Control Number Application Form (Appendix D, Doc. 8)

Communicating with an incarcerated client is different from communicating with the clients you may be used to; incarcerated people are subject to many restrictions. Since you can't just pick up a phone to call your client or communicate with them over email, it's important to build in time to account for potential delays, and to make sure you are proactive in keeping up to date on your client's situation.

Phone Calls

You can only receive calls from DOC prisoners; you cannot place a call *to* a prisoner. Regulations on telephone calls are addressed by [103 CMR 482](#) (see **Appendix D, Doc. 1**). In order to make a legal call, a prisoner must add the attorney to their authorized PIN list. Prisoners can have five attorney phone numbers on their PIN list at a time. Calls placed to attorney phone numbers are not supposed to be monitored or recorded. Calls are cut off after 20 minutes unless the prisoner is using a Captioned Telephone (for those who are deaf and hard of hearing).

Practice Note:

At the beginning of a phone call or Zoom video visit, it is good practice to confirm with your client that they are somewhere where they can speak confidentially and that they are not being monitored by a CO. If they report there is an officer monitoring them within earshot (line of sight is generally acceptable), you should ask the client to put the officer on the line so that you can inform them that this is a legal call cannot be monitored.

At present, telephone services in DOC are provided by Securus, a private contractor. Legislation making all telephone calls in DOC free was recently signed into law and all telephone calls are free as of December 1, 2023.

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Legal Video Visits

Attorneys, paralegals, and law students can schedule Zoom video visits with their clients in the DOC. The Standard Operating Procedure concerning attorney video visits is published at www.mass.gov/doc/486-sop-attorney-video-visits/download (see **Appendix D, Doc. 2**)

Any attorney can request an attorney video visit for Monday-Friday between 9 AM and 4 PM. Requests are made by email, ideally a few days (but at least 24 hours) ahead of time. The points of contact (POC) for each prison are listed at **Appendix D, Doc. 3** (note that there may be frequent changes to the POC, so you may have call to locate the correct POC if it has changed). Once you have scheduled the video visit, you will have to generate the Zoom room for the meeting and provide the meeting ID and passcode to the point of contact.

If you plan to have paralegals, law students, or interns present at the meeting, you must provide their names and job titles in the email. You should provide your bar number in your initial email, and you may be asked to show your bar card at the start of the meeting.

If your client is hard-of-hearing and you think they may benefit from captioned Zoom calls, you can ask the officer who opens the Zoom room to turn on captions. These can be enabled on your end by selecting the “cc” button on the bottom panel of your Zoom screen. At some facilities, clients may have access to headphones for video calls.

Sample email to request attorney video visit:

I would like to schedule an attorney video visit with [Client Name], [Client ID Number] between [Requested Time Range] on [Date]. My BBO number is [#####] If these times are not available, I am happy to provide additional availability. [Name], a [paralegal/law student] at my firm, will be at the meeting as well. I will provide a Zoom meeting invite once the meeting time is set.

Sincerely,
[Name], Esq.

Legal In-Person Visits

Attorneys can visit any prisoner in a DOC prison between 9AM and 8:30PM seven days per week. While attorneys generally don’t have to schedule their visits in advance, in some cases it can be helpful to do so. If the client lives in a health services unit or another specialized unit, you should call ahead to find out whether you need an appointment to meet with the client. Especially in cases where the client leaves the prison regularly for medical appointments, you should call the prison before you leave your office or home to drive there, in case the client will be out of the prison at a medical appointment. Typically, you can get this information from the

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Superintendent's office (follow the phone prompts) or from the operator. Your client will not be able to help you with this because prisoners are not told of appointments out of the prison until the morning of, for security reasons. You can also use [Vinelink](#) to confirm which prison your client is living in, although it will not show if the client is out of the prison for the day. If you are a paralegal or law student and your client is in such a specialized unit, you should schedule your visit in advance.

Practice Note:

It can sometimes be helpful to bring in a camera to take photos of your client to append to the petition to show their debilitation. You can only use a digital camera (not a cell phone) for these photos. This must be cleared through the Superintendent's office in advance (ideally via email), and you should bring this written confirmation of the clearance with you on the visit.

You may want to try to avoid regular visiting hours, shift change, and major counts when you are planning a visit, in order to avoid delays. Visiting hours can be found on the DOC website, and you can call the prison and ask about shift change and major counts.

Paralegals and law students are limited to the general visiting hours for the prison and unit where the client resides unless they're with an attorney. They also need to be cleared in advance. If you have a paralegal or law student visiting without you, they can find the regular visiting hours listed by type of unit in the specific visiting procedures for that facility. The DOC website has a list to these procedures, broken down by facility: www.mass.gov/lists/specific-visiting-procedures. For information regarding paralegal and law student visits, including how to obtain clearance, please read the Note on Paralegals and Law Students section below.

Day-Of Visiting Tips:

- Bring a copy of the attorney access regulations, [103 CMR 486](#) (**Appendix D, Doc. 4**), and review the [attorney dress code guidelines](#) (**Appendix D, Doc. 5**) before leaving for a visit.
- Have your client's name and ID number written out and easy to access.
- Along with your bar card, ID, keys, and quarters for a locker, bring only a pad of paper, pens, a folder, any paperwork relevant to your representation, and a digital camera (if necessary/pre-approved). Check your paperwork and remove any paperclips or binder clips. Leave all other belongings in your car, or plan to lock them in a locker in the waiting area.
- Paralegals and law students should bring a printed copy of their clearance documentation.
- When you arrive, fill out the visiting form or ask the correctional officer ("CO") at the front security desk what steps you will need to take to be processed in for an attorney visit. If you have never visited that prison before, the CO may enter your information into their system. Some facilities may ask for your vehicle registration number or license plate.
- If you arrived during regular visiting hours, there may be many family and friends waiting to be processed. As an attorney you do not have to wait in line or draw a number to be processed; let the CO know you are there for an attorney visit to be processed more quickly.

- You will give the CO your form, ID, and bar card. Typically, they will return your ID and bar card and you will need to lock them up with your other belongings. You can ask the CO whether or not you will be walking outside to get to your client, and if so, you may keep your jacket with you.
- At the CO's direction, you will go through a metal detector, have your wrist stamped with UV-visible ink. The CO may flip through your paperwork, but they are not supposed to read it. Paralegals and law students must go through additional search procedures and may be required to undergo a pat search by a CO, something that attorneys are not subject to.
- Once you are through security, make sure you ask the CO how to get to the visiting room if you don't know. If you are going somewhere other than the prison's visiting room, you will be escorted by a CO.

Practice Note:

Altogether, processing typically takes 20 mins to an hour. Sometimes, there is a delay because the facility locks down due to an emergency. When this happens, no one can go in or out. Since you won't have access to a cell phone during this time, you may want to let a family member or colleague know that you will be visiting a facility that day.

Legal Mail

Prisoners can send and receive mail while in prison, with some restrictions. The regulations that apply to mail are [103 CMR 481](#) (**Appendix D, Doc. 6**). The attorney client privilege extends to legal mail, which means it cannot legally be read by the DOC. Prison staff are allowed to open legal mail only in front of the prisoner to whom it is addressed and are only allowed to shake it out to be sure there is no contraband inside. It is recommended that in order to ensure your mail is treated as legal mail, you stamp the front and back of each envelope you send to a prisoner that reads "ATTORNEY CLIENT CORRESPONDENCE," "LEGAL MAIL," or something similar. If you are asking your client to return anything to you by mail, you may want to include a self-addressed, stamped envelope with a postage meter stamp.

Legal mail is defined fairly broadly and includes any letter or other mail to a prisoner having to do with communication about a legal issue you are working on, including setting up a visit time, forms or information materials, copies of records, etc. No personal communications should be sent as legal mail. Additionally, it is a violation of the legal mail regulations to forward letters or documents received as legal mail to a third party outside of prison.

On May 1, 2024, the DOC began requiring legal advocates to utilize an Attorney Verification System ("AVS") to send legal mail. The implementation memo describing the process is available at **Appendix D, Doc. 7**. As soon as you are assigned to a medical parole matter, you should fill out an AVS Control Number Request Form (see **Appendix D, Doc 8**) and submit it to

This guide was published by Prisoners' Legal Services on Oct. 30, 2024. Attorneys using this guide are responsible for staying current on the laws, regulations, policies, and procedures affecting representation.

DOC.AVS@doc.state.ma.us to receive an Attorney Control Number and corresponding stickers that you must attach to all legal mail going into the institution. If you need to send mail to your client and do not yet have stickers, you can do so; however, the DOC will call you upon receipt of the letter to verbally confirm that you sent the letter.

CorrLinks Email

Your client may ask you to add them as a contact on CorrLinks, a system that allows prisoners to email with approved contacts on the outside. **It is extremely important that both you and your client know that CorrLinks communication is neither privileged nor confidential;** the DOC actively monitors and approves/rejects emails sent via CorrLinks. Additionally, keep in mind that CorrLinks is not instantaneous; it usually takes between 1-4 days for messages to be approved and sent.

It is up to you if you choose to use CorrLinks. If you choose to use it, you can register for CorrLinks at www.corrlinks.com. Before setting up CorrLinks, you should make sure to clearly explain to your client that CorrLinks is monitored by DOC and that using it will waive any attorney-client privilege you may have in your communications. For this reason, it's recommended that you use CorrLinks only to communicate with your clients about logistics (for example, letting them know when you have an in-person or Zoom visit scheduled). Likewise, you should instruct your client to communicate with you over CorrLinks at a bare minimum (for example, to send you an email requesting that you set up a Zoom visit with them).

If you are not comfortable using Corrlinks due to confidentiality concerns, you can tell your client this and ensure that other lines of communication are available should they need to contact you for urgent updates about their situation (for example, by providing them with the best hours to reach you by phone).

Note on Paralegals and Law Students

Paralegals and law students can also communicate in all the abovementioned ways but need advance clearance for zoom and in-person visits. This can take up to a week. To request clearance for them, you should send a letter to the superintendent at the prison where your client is held providing their title, name, DOB, and state ID number of the paralegal, and indicating that they work under your supervision. Include a copy of their state ID. If they are a law student, indicate that and include a copy of a current Letter of Good Standing, which the law student can obtain from their school's Dean's office.

Please do not send this guide into DOC facilities.

Sample email to request video and in-person visit clearance for a paralegal or law student:

Re: [Paralegal OR Law student] Clearance

Dear Superintendent:

This is a request for you to provide clearances for the paralegal(s) below, who are under my general supervision, to enter your institution for the purpose of interviewing prisoner clients, pursuant to 103 CMR 486.06 and 486.07. Their address is [Your work address].

NAME

D.O.B

DRIVERS LICENSE #

[individual information here]

Enclosed you will find a copy of their driver's license [if a law student include: along with a letter of good standing from their law school].

If you require additional information, please contact me at [Your phone number] or [Your email].

Please note that a response is requested by email or fax, so it simplifies entry to your facility.

Sincerely,

[Name, Esq.]

Please do not send this guide into DOC facilities.

PLS Referral Process and Sign-Up

If representing a prisoner in their medical parole petition sounds like the right pro bono opportunity for you, you can sign up to receive referral emails below:



OR

www.plsma.org/mptraining and follow link to register

When a case becomes available, we will send a case summary to our mailing list. If you would like to accept the case (keeping in mind that medical parole cert actions are time-sensitive and will require you to start immediately), you can let us know by responding to the email. In general, we assign cases on a first come, first served basis, although we may make exceptions at our discretion for clients with language access needs or other special needs.

Once you've accepted a client on a provisional basis, you are responsible for promptly conducting any necessary conflict checks. We will also ask you to complete a Pro Bono Attorney Expectations Agreement. PLS's medical parole team will be available to answer your questions throughout your representation.

Finally, we will ask you to report the outcome and your pro bono hours at the end of the representation.

Attorney Expectations for Cert Referrals

Medical parole cases are time-sensitive by nature. While cert petitions must be filed no later than 60 days from the date of the decision, your client's declining health may necessitate swifter action. It is therefore important for attorneys to be proactive and consistently working to move the case forward. As with all pro bono matters, attorneys who accept medical parole petitions should exercise the same compassion, zealotry, and diligence that they would afford a paying client. PLS will assign a mentor to each case we refer to answer questions, offer advice, and check in on attorneys' progress.

By accepting a medical parole petition referral from PLS, attorneys agree to the following expectations:

Client Relations

- The attorney will establish contact with their client within a week of accepting the referral to introduce themselves.
- The attorney will explain the scope of their representation to the client and execute a representation agreement. (We have provided a sample agreement in the materials, but many firms/attorneys choose to use their own.)
- The attorney will make efforts to meet their client in person at the facility the client is housed in at least one time.
- If necessary, the attorney will use an interpreter service to ensure proper communication with non-English speaking clients. (PLS will let you know in advance if we think this will be necessary, and we can usually provide recommendations for interpreters.)
- The attorney will maintain regular contact with their client during the course of representation and will promptly notify the client and PLS when the cert action is filed, when a hearing is scheduled, and when a decision is issued.

Diligence

- The attorney will obtain the records necessary to support the petition.
- The attorney will timely file the cert action upon accepting the referral from PLS. At the 6-week mark, PLS will follow up to check in on the cert's status.
- If the client experiences a decline in health and/or prognosis before the cert is filed, the attorney consider filing a request for reconsideration with the DOC Commissioner. PLS can consult with you on this decision.
- If the client experiences a decline in health and/or prognosis after the cert is filed, the attorney will consider filing a status report with the court. PLS can consult with you on this decision.

Post-Decision

- Once the court issues its decision, the attorney will immediately report the outcome to PLS.
- **If cert is denied**, the case can be appealed. While the attorney are not obligated to take on the appeal, it is encouraged and appreciated. The attorney must inform PLS if they do/do not plan to appeal so that we can determine whether we should find counsel for the client or appeal ourselves. You have 60 days to file a Notice of Appeal.
- **If cert is granted**, we **strongly** encourage the attorney to continue to represent their client on the medical parole petition's remand to the Commissioner. This may require obtaining a new retainer agreement. If the attorney is unable to represent the client on remand, they must inform PLS as soon as possible so that we can find counsel for the client or represent the client ourselves.